

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTWAN L. LEWIS,

Defendants.

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Case No. 07-CR-223(02)

JUDGE ALGENON L. MARBLEY

ORDER

This matter is before the Court on the Defendant's Motion to Dismiss Indictment for F. R. Cr. P. 6 Violations, or in the alternative, Motion to Inspect List of Names of Qualified Grand Jurors who Voted the Indictment. (Doc. 87). The Government in opposition argues that the Motion must be dismissed because it is untimely filed. (Doc. 90).

A defendant has the right to inspect jury selection materials to determine whether a motion may be filed to challenge the composition or selection of the grand jury. *McLernon*, 746 F.2d at 1123; 28 U.S.C. §1867(f). Defendants, however, "are not normally entitled to the names of the members of the grand juries that indicted them." *In re Grand Jury Investigation*, 903 F.2d 180, 182 (3d Cir. 1990) (citing *United States v. McLernon*, 746 F.2d 1098, 1122-23 (6th Cir. 1984)).

Under Federal Rule of Criminal Procedure 6(b), a defendant may challenge the composition or selection of a grand jury and may move to dismiss the indictment based on an objection to the grand jury. Such a challenge is governed by 28 U.S.C. § 1867, which provides that the challenge must be made before voir dire or within seven days of the date upon which the defendant discovered or could have discovered the grounds for the motion. A challenge to the

indictment may not be made after trial. Fed. R. Crim. P. 12(b)(3). *See also Shotwell Mfg. Co. v. United States*, 371 U.S. 341, 362 (U.S. 1963) (interpreting Rule 12(b) to require challenges to the grand jury to be made before trial).

In this case, the indictment was returned on November 15, 2007, or nearly three years before the filing of the Motion. The Defendant pled guilty on May 2, 2008 and was sentenced on September 8, 2008. He filed this Motion on October 22, 2010. The Defendant's motion to dismiss the indictment is clearly untimely and must be denied. His request for disclosure of the identities of the grand jurors also must fail because he only has a right to grand jury information while pursuing a motion under Rule 6, a motion that he is now time-barred from filing.

For the above reasons, the Defendant's Motion is hereby **DENIED**.

IT IS SO ORDERED.

s/Algenon L. Marbley
United States District Court Judge

DATED: November 5, 2010